IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.259 (S/B) of 2003

Charan Singh, Junior Branch Manager,
District Cooperative Bank Ltd., Distt. Haridwar

... Petitioner

Vs

1. Secretary/Mahaprandhak, Distt. Cooperative Bank Ltd.
2. Registrar, Cooperative Societies, Uttaranchal, Dehradun

... Respondents

Sri Sharad Sharma, Advocate, learned counsel for the petitioner.
Sri Lok Pal Singh, Advocate, learned counsel for respondents

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the order dated 12.05.2003 passed by Respondent No.2-Registrar, Cooperative Societies, Uttaranchal and further a writ of mandamus has been prayed to command the respondents to consider the petitioner's claim for promotion to Class-I post of Senior Branch Manager against the post reserved for a reserve class candidate.

This Court vide order dated 8.4.2003 issued notices to the respondents to enable them to file counter affidavit and in the meantime, directed the respondents to decide the representation of the petitioner dated 24.02.2003.

The Registrar, Cooperative Societies-Respondent No.2 decided the representation of the petitioner vide letter dated 12.5.2003 and rejected the representation of petitioner. Thereafter, the petitioner amended the writ petition and challenged the order passed by the Registrar, Cooperative Societies

dated 12.5.2003, contained in Annexure No.CA 2 to the counter affidavit and prayed for quashing of the same.

The promotion of class-I category of officers for class-II officers i.e. from Group-I to Group-II in the District Cooperative Banks are governed by the U.P. Cooperative Societies Employees Service Regulations, 1975. Regulation 27 of the said Regulations provides that 75% posts shall be filled up by promotion and 25% posts shall be filled up by direct recruitment.

There are 13 posts of Senior Branch Managers Class-I Officers in the establishment of Respondent No.1 i.e. District Cooperative Bank, District Hardwar. Out of 13 posts, 10 posts are to be filled up by promotion and 3 posts are to be filled up by direct recruitment.

There is 13% reservation in favour of the scheduled caste candidates in the direct recruitment as well as in the promotion.

Registrar, Cooperative Societies for rejecting the representation of the petitioner has given the reason that there are 13 sanctioned posts of class-I officers in the Bank and after applying 19% reservation for scheduled caste candidates, only 2.47% i.e. 2 posts are reserved for scheduled caste candidates. It has further been stated by the Registrar that 3 posts are to be filled up by direct recruitment and while applying the 19% reservation, 0.57% posts i.e. one post is to be filled up from amongst the scheduled caste candidates by direct recruitment and against one post reserved for the scheduled caste candidate, one scheduled caste candidate has already been promoted, therefore, there is no vacancy to be filled by promotion.

The impugned order of the Registrar, Cooperative Societies by which he has rejected the representation of the petitioner is apparently erroneous. In as much as the Registrar mislead himself by applying

the percentage on the total sanctioned strength before dividing the post as per quota to be filled up by direct recruitment and promotion and has wrongly came to the conclusion that only two posts are reserved to be filled up from amongst the scheduled caste category candidates i.e. one by promotion and one by direct recruitment.

The fact that there are 13 posts of the Senior Branch Managers i.e. class-I officers out of which 10 posts are to be filled up by promotion and 3 posts are to be filled up by direct recruitment, there is separate reservation in direct recruitment and in promotion. Therefore, the quota rule has to be applied first then the reservation should be applied thereafter. Thus, out of 10 posts to be filled up by promotion, 1.9% posts are to be filled up by promotion and out of 3 posts to be filled up by direct recruitment, 0.57% are to be filled up from amongst the scheduled caste candidates. In the reservation rule, the provision is clear that if the percentage increased more than .50%, it should be taken in round figure to be one. Accordingly, 1.9% comes to 2 posts and 0.57% posts comes to one post. Inevitable conclusion is that two posts are to be filled up by promotion and one post is to be filled up by direct recruitment. By giving reservation to only 2 posts from 13 posts, the Register, Cooperative Societies has reduced the percentage of reservation to be given to the scheduled caste category candidate under the Rule which is 19% Out of 13 posts if only 2 posts are given, the percentage comes to only 15.38% only which is less than the percentage prescribed for scheduled caste category candidate which under the rules is 19%. The Registrar, Cooperative Societies was not competent to reduce the percentage by 4%. Thus, the percentage given by the Registrar is against the Rule of 19% reserved in favour of scheduled caste category candidates.

Learned standing counsel sought to defend the order of the Registrar that if the 19% reservation of the scheduled caste candidate is applied quota-wise, then the percentage of reservation will increase and will go up to 23%. The argument of the learned standing counsel is misconceived. The percentage has increased on account of the fact that the figure is taken in round figure as per reservation rule. Though apparently after fraction taken into round figure, the percentage comes to 23% but in fact, only 19% reservation has been applied as per rule in each quota and not beyond that.

Thus, the order of Registrar cannot be sustained in the eye of law and is hereby quashed. The respondents are directed to determine the quota as per the observation made above i.e. to fill two posts by promotion and one post by direct recruitment from amongst the scheduled caste category candidates. The petitioner has claimed to be senior most and is eligible to be considered for promotion against the reserved post for scheduled caste category candidate.

Since we have held that two posts are to be filled up by promotion and one post is to be filled up by direct recruitment and the petitioner case is liable to be considered against the said post, accordingly we direct the Registrar, Cooperative Societies to consider the case of the petitioner for promotion against the third post to be filled up by promotion within a period of one month from the date of production of certified copy of this order.

For the reasons recorded above, the writ petition is allowed. No. order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

18.05.2006 18.05.2006.

Rajeev Dang